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MR. JUSTICE PANDRANG ROW'S RETIREMENT.

Mr. Justice Pandrang Row will be retiring from service during the summer recess of the High Court. He has been a member of the Bench for well-nigh seven years and a half and during that period has won the appreciation of the profession as a very able and conscientious Judge. Gifted with an intuition, swift and searching, and a power of analysis, keen and incisive, he was easily able to get to the core of a case, however complicated the facts, or however subtle the points of law raised, might be; and he was equally at home both in civil and criminal work. His attitude on the Bench was at the beginning somewhat disconcerting to the practitioners who had to appear before him, by reason of the catechetical method he adopted, often from the very opening of the case, and by reason of the rather brusque manner in which he not infrequently expressed himself. The first impression, perhaps not unnaturally, was that the practitioners were cornered, confuted, and overthrown in argument and humiliated, but it was soon realised that it was mere external manner, the result of intellectual alertness and vigour trained in methods of controversy, that the initial instinct of challenge did not persist or prevail over his sound perception of things and that to the end he kept an open and receptive mind. He had no hesitation to brush aside technical considerations to ensure justice being done. In fact it might be said that his ideal was that justice should not merely be done but should also seem to be done. His work as a Judge has been characterised by thoroughness, independence and sound learning and by his retirement a distinctive personality and a sound Judge will be lost to the High Court.

THE LAW OF EVIDENCE IN ANCIENT INDIA

BY

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A commentator on the Indian Evidence Act, has in the introduction to his book stated, "neither Manu and his Brahminical commentators nor Muhamadan Moulvis laid down any definite rules regarding the admission and rejection of evidence." The object of this article is to demonstrate that in the Hindu jurisprudence the law of evidence has been analytically and succinctly dealt with by Manu, Narada, Yajnavalkya, and other Hindu jurists and exegetists.

Yagnavalkya classifies प्रमाणं (evidence) thus:—

> प्रमाणं लिखितं भुक्तिः साक्षिणश्चेति कीर्तितम् ।
>
> एषामन्यतमाभावे दिव्यान्यतममुच्यते ॥[1]

प्रमाणं *i.e.* Evidence or the *factum probans* is mainly of two kinds (1) मानुष *i.e.* human (2) दिव्य *i.e.* divine; when the former is available the latter should not be invoked.

मनुष्यप्रमाणं or human evidence is again of three kinds, (1) लिखितं documentary evidence, (2) साक्षिणः witnesses (oral evidence), (3) भुक्तिः possession or enjoyment. Narada says

> प्रमाणानि प्रमाणस्थैः परिकल्प्यानि यत्नतः ।
>
> —Narada, I, 68.

—as far as possible facts should be proved by primary evidence only. As to the probative force of the aforesaid three kinds of evidence Narada says:

> लिखितं बलवन्नित्यं जीवन्तश्चैव साक्षिणः ।
>
> कालातिहरणाद्भुक्तिरिति शास्त्रेषु निश्चयः ॥

—documentary evidence is always strong ; oral evidence is good only so long as the witnesses are alive ; and possession or enjoyment gathers strength by lapse of time ; thus is laid down in Sastras.

लिखितं or documentary evidence may be looked at first. It is of two kinds.

(1) शासनं Statutory or Public documents, and (2) चीरकं or जानपदं Private documents.

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1. *C. F.*:—"लिखितं साक्षिणो भुक्तिः......।"

—Narada, I, 65.

Narada says thus about private documents:

लेख्यं तु द्विविधं ज्ञेयं स्वहस्तान्यकृतं तथा ।
असाक्षिमत्साक्षिमच्च सिद्धिर्देशस्थितेस्तयोः ॥

—Narada, 135.

—(Private) documents are of two kinds (1) स्वहस्तकृत *i.e.* documents written or executed by the person concerned, and (2) अन्यहस्तकृत documents written or executed by others. Again they may be either (*a*) साक्षिमत् attested, or (*b*) असाक्षिमत् unattested. The validity or invalidity, admissibility or inadmissibility of attested and unattested documents depends upon the practice obtaining in that particular part of the country.

सिद्धिर्देशस्थितेस्तयोः ।

If a document is not contrary to the practices of that part of the country and if there are no corrections, alterations or erasures etc., it may be admitted in evidence.

देशाचारविरुद्धं यद् व्यक्ताधिविधिलक्षणम् ।
तत्प्रमाणं स्मृतं लेख्यमविलुप्तक्रमाक्षरम् ॥

—Narada, 136.

Admissions :—A document written or executed by the person concerned is not evidence in his favour as it is only a self-serving document, but अन्यहस्तकृत documents executed by others are good evidence against him. Also स्वहस्तकृत *i.e.* self-written or self-executed documents will be evidence against the executant as admissions, even when they are not attested by witnesses though required by law to be so attested, except in cases where a document is proved to have been executed under coercion, undue influence, fear etc., or when the executant is drunk, or engaged in litigation or is a woman or child.

विनापि साक्षिभिर्लेख्यं स्वहस्तलिखितं तु यत् ।
तत् प्रमाणं स्मृतं लेख्यं बलोपाधिकृताहते ॥
मत्ताभियुक्तस्त्रीबालबलात्कारकृतं च यत् ।
तदप्रमाणं करणं भीतोपाधिकृतं तथा ॥

—Narada, 137.

Secondary Evidence :—Regarding secondary evidence the Smritikars say as follows:

लेख्ये देशान्तरस्थे च दग्धे दुर्लिखिते हृते ।
सतस्तत्कालकरणमसतो द्रष्टृदर्शनम् ॥
छिन्नभिन्नहृतोन्मृष्टनष्टदुर्लिखितेषु च ।
कर्तव्यमन्यल्लेख्यं स्यादेष लेख्यविधिस्स्मृतः ॥

—Narada, 142, 146.

देशान्तरस्थे दुर्लेख्ये नष्टोन्मृष्टे हृते तथा ।
भिन्ने दग्धेऽथवा छिन्ने लेख्यमन्यत्तु कारयेत् ॥

—Yajnavalkya.

A copy of a document can be prepared and it can be admitted in evidence in the following cases: (1) when the document is in a foreign country (2) when it is burnt (3) when it is illegible (4) when it is stolen (5) when both parties consent (6) when it is torn (7) when it is worn out, and (8) when it is lost.

लिखितं लिखितेनैव साक्षिमत् साक्षिभिर्हरेत् ।
साक्षिभ्यो लिखितं श्रेयो लिखितान्न तु साक्षिणः ॥

—Narada, 145.

In all other cases where there are the originals, they should be proved by primary evidence alone; if the document is one attested by witnesses it can be proved by the oral evidence of those witnesses— Documentary evidence is better than oral evidence, but sometimes oral evidence is superior to documentary evidence, for example in the case of *benami transactions*.

लेख्यं यच्चान्यनामाङ्कं हेत्वन्तरकृतं भवेत् ।
विप्रत्यये परीक्ष्यं तत् सम्बन्धागमहेतुभिः ॥

—Narada, 144.

—When a document is taken or (appears) in the name of another person for some reason or other, on account of extreme confidence (विप्रत्यय) in that person, that can be proved by the संबन्ध relationship (between the parties) आगम by title (of real owner), and हेतु motive for the transaction. That is to say oral evidence is admissible in such cases, to prove the real nature of the documents.

Comparison of handwriting: Forgery. (अभूतकृत) The Smritis declare:

यत्र स्यात् संशयो लेख्ये भूताभूतकृते क्वचित् ।
तत् स्वहस्तक्रियाचिह्नयुक्तिप्राप्तिभिरुद्धरेत् ॥

—Narada, 143.

संदिग्धलेख्यसिद्धिस्स्यात् स्वहस्तलिखितादिभिः ।
युक्ति-प्राप्ति-क्रिया-चिह्न-संबन्धा-ऽऽगमहेतुभिः ॥

—Yagnavalkya.

—when there is suspicion about the execution or genuineness of a document or when the document is attacked as a forgery it can be proved by any of the following methods:

(1) by comparison with the admitted handwriting of the person, (2) by tact, (3) by guess or conjecture, (4) by judicial investigation, (5) by indications, (6) by context, (7) by motive, reason etc.

Public documents (शासन) *and Judicial Notice*: On this point it is stated:

राज्ञस्स्वहस्तसंयुक्तं स्वमुद्राचिह्नितं तथा ।
राजकीयं स्मृतं लेख्यं सर्वेष्वर्थेषु साक्षिमत् ॥

—documents bearing the signature or seal of the King are called Royal documents (public documents) and they are evidence in all actions:—

(2) साक्षिण: *Witnesses or Oral Evidence.* According to Narada,

संदिग्धेषु तु कार्येषु द्वयोर्विवदमानयोः ।
दृष्टश्रुतानुभूतत्वात् साक्षिभ्यो व्यक्तिदर्शनम् ॥

—Narada, 147.

—the matters in dispute between the parties can be proved by witnesses who have actually seen, heard, or perceived by any other sense. Bhavaswamy, the commentator on the Institutes of Narada explains this verse thus:

"दृष्टं चक्षुर्द्वारेण ज्ञातं, श्रुतं श्रोत्रद्वारेण, अनुभूतं लिङ्गादिनिमित्तं स्वसंवेद्यज्ञानं अन्यथा संभवविलोपत्राभिघातादिनैवमेव न अन्यथा परिच्छेदज्ञानम् । प्रत्यक्षानुमानागमैः यस्मादर्थः परिच्छिन्नः तस्मात्तेभ्यो व्यक्तिदर्शनमुपपद्यते । यस्मात् सर्वपरिच्छेदहेतवः प्रत्यक्षानुमानागमाः, तैः परिच्छिन्नत्वात् उपपन्नं तेषां प्रामाण्यमिति ।"

—facts which are actually or directly seen with eyes, heard with ears, or perceived by any other sense must be spoken to by persons who have seen, heard, or experienced by other senses, by inferences, and opinions etc., and that only is evidence. A witness ought to

depose to those things only which he has either seen or ascertained to be true by his bodily senses. Narada defines a witness साक्षी, thus:

> समक्षदर्शनात् साक्षी विज्ञेयः श्रोत्रचक्षुषोः ।
> श्रोत्रस्य यत्परो ब्रूते चक्षुषोर्दर्शनं स्वयम् ॥

—Narada, 148

—a person who actually or directly sees a particular thing or action or actually or directly hears a particular fact which is sought to be proved is a witness.

He refers to 11 kinds of witnesses.

> एकादशविधस्साक्षी शास्त्रे दृष्टो मनीषिभिः ।
> कृतः पञ्चविधस्तेषां षड्विधोऽकृत उच्यते ॥

—Narada, 149

—in Sastras 11 kinds of witnesses are to be found. Five कृतसाक्षिणः *i.e.*, pre-appointed or pre-constituted witnesses and six अकृतसाक्षिणः unappointed witnesses.

The five pre-appointed or pre-constituted witnesses are:

> लेखितः स्मारितश्चैव यदृच्छाभिज्ञ एव च ।
> गूढश्चोत्तरसाक्षी च साक्षी पञ्चविधः कृतः ॥

—Narada, 150

(1) attestors and scribes of a document, (2) a witness who is appointed by a party to see and speak to a particular fact and who is often reminded of the same by that party, (3) a voluntary or self-offered witness or an accidental witness who is neither a scribe nor an attestor of a document, (4) a clandestine witness employed by a party to watch the movements of his opponents and to overhear their talk and (5) defence witnesses.

The six unappointed witnesses are:—

> अकृतः षड्विधो नित्यः सूरिभिः परिकीर्तितः ।
> ग्रामश्चा-प्राड्विवाकश्च राजा च व्यवहारिणाम् ॥
> कार्येष्वभ्यन्तरो यः स्यादर्थिना प्रहितश्च यः ।
> कुल्याः कुलविवादेषु भवेयुस्तेऽपि साक्षिणः ॥

—Narada, 152

(1) community or race (Village), (2) a judge, (3) a king, (4) officers, (5) a person sent by a debtor to a creditor and (6) caste people in cases of caste disputes. These six can be taken as witnesses in all matters.

Who are good witnesses:—These are

तपस्विनो दानशीलाः कुलीनाः सत्यवादिनः ।
धर्मप्रधाना ऋजवः पुत्रवन्तो धनान्विताः ॥

(1) Persons who practice penance, (2) Charitable persons, (3) Persons of high family, (4) Truthful persons (5) Persons who have got high regard for duty, (6) Straight-forward persons (7) Persons having children (8) and Rich persons.

Number of witnesses required:—Regarding the number of witnesses required the Smritis prescribe:

त्र्यवराः साक्षिणो ज्ञेयाः श्रौतस्मार्तक्रियापराः ।
यथाजाति यथावर्णं सर्वे सर्वेषु वा स्मृताः ॥

—Yagnavalkya.

त्र्यवराः साक्षिणोऽनिन्द्याः शुचयः शुद्धबुद्धयः ।

—Narada, 53

—at least there should be 'three witnesses' in a case. They must be persons performing Srouta and Smarta rites, noble-minded, and belonging to the same race and same caste. An exception to the rule is postulated by Yagnavalkya:

उभयानुमतः साक्षी भवत्येकोऽपि धर्मवित् ।

—even one learned witness is sufficient when he is agreeable to both parties. In the application of the rule according to Narada,

साक्षिविप्रतिपत्तौ तु प्रमाणं बहवो यतः ।
तत्साम्ये बहवो ग्राह्यास्तत्साम्ये स्मृतिमत्तराः ॥

—Narada, 229

—where there are several witnesses and there are material discrepancies in their evidence, the evidence of the majority is to be taken. If they are equal the evidence of the more worthy is to be accepted *c.f.*—*Testibus deponentibus in pari numero dignioribus est credendum*—Where the number of witnesses is equal on both sides the more worthy are to be believed.

Selection of witnesses:—Regarding selection of witnesses the rule of preference is.

ब्राह्मणा क्षत्रिया वैश्याः शूद्रा ये चाप्यनिन्दिताः ।
प्रतिवर्णं भवेयुस्ते सर्वे सर्वेषु वा पुनः ॥

—Narada, 154

—Brahmin witnesses for Brahmins, Kshatrias for Kshatrias, Vysyas for Vysyas and Sudras for Sudras. Likewise

श्रेणीषु श्रेणिपुरुषाः स्वेषु वर्गेषु वर्गिणः ।
बहिर्वासिषु बाह्याः स्युः स्त्रियः स्त्रीषु च साक्षिणः ॥

—Narada.

स्त्रीणां साक्ष्यं स्त्रियः कुर्युः........

—Manu.

—guild-men for guild-men, artisans for artisans, outcastes for outcastes and women for women are witnesses. An exception to the above rule is thus stated:

श्रेण्यादिषु च सर्वेषु कश्चिच्चेत् द्वेष्यतामियात् ।
तेभ्य एव न साक्षी स्यात् द्वेष्टारः सर्व एव ते ॥

—If among the members of the guild etc., mentioned above there is one member who is on inimical terms with the rest of the members, none of those members can be cited as a witness against that member, since they are all his enemies:—

Persons who are unfit to be witnesses:—According to Narada,

असाक्ष्यपि हि शास्त्रेऽस्मिन् दृष्टः पञ्चविधो बुधैः ।
वचनात् दोषतो भेदात् स्वयमुक्तिर्मृतान्तरः ॥

—Narada, 157

—there are five kinds of persons to be found in the Sastras who are unfit to be witnesses:

(1) by virtue of the precepts of the sacred texts themselves, (2) on account of blemish, (3) on account of discrepancies, (4) voluntary witnesses (5) dead persons etc.

(1) वचनात् by virtue of the precepts of the sacred texts themselves without any reason being assigned for the exclusion.

श्रोत्रियास्तापसा वृद्धा ये च प्रव्रजिता नराः ।
असाक्षिणस्ते वचनान्नात्र हेतुरुदाहृतः ॥

—Narada, 158

—Brahmins, well-versed in sacred learning, and practising religious austerities; persons practising penance; old people; religious mendicants or ascetics.

No reason is given for their exclusion.

(2) दोषात् on account of blemish:—

स्तेनाः साहसिकाश्चण्डाः कितवा वञ्चकास्तथा ।
असाक्षिणस्ते दुष्टत्वात् तेषु सत्यं न विद्यते ॥

—thieves, desperadoes or rash persons, fierce or wrathful persons, rogues, liars, cheats, swindlers, these people also cannot be accepted as witnesses since truth cannot be expected of them.

(3) भेदात् on account of discrepancies:

राज्ञा परिगृहीतेषु साक्षिष्वेकार्थनिश्चये ।
वचनं यत्र भिद्येत ते च स्युर्भेदसाक्षिणः ॥

—Narada, 160.

When there are discrepancies in the evidence of the witnesses of a case, they are called discrepant witnesses.

(4) स्वयमुक्तः, Voluntary evidence:

सूचीत्युक्तः स शास्त्रेषु न साक्षित्वमर्हति ।

—The evidence of a person who volunteers, should not be accepted. He is called in the Sastras सूची a spy or an informer.

(5) मृतान्तरः on account of death or destruction:—When the *factum probandum* or the fact to be proved is itself destroyed and also the party concerned, for whom has the evidence to be given?

By way of exception Narada has declared:

मृतान्तरेऽर्थिनि प्रेते मुमूर्षुश्रावितादृते ।

Bhavaswamy explains this passage thus:—

When the person who is about to die makes statements in a sound state of mind to his sons and relatives etc., that such and such people or such and such things or documents are evidence in a cause those statements are admissible in evidence.

साक्ष्युद्दिष्टो यदि प्रेयात् गच्छेद्वापि दिगन्तरम् ।
तच्छ्रोतारः प्रमाणं स्युः प्रमाणं ह्युत्तरा क्रिया ॥

When a witness who is summoned dies, or leaves for a foreign country, the persons who heard him speak about the facts in the case can be cited as witnesses; but their evidence can be rebutted.

Narada gives an exhaustive list of persons who are not fit to be witnesses:—

(1) दास Servant (2) नैकृतिक People who always try to pick holes in others (3) अश्रद्ध Erratic people (4) वृद्ध Old people (5) स्त्री Women (6) बाल Children (7) चाक्रिकाः Persons who live by grind-mill (8) मत्त Drunkards (9) उन्मत्त Lunatics (10) प्रमत्त Wanton or lascivious persons (11) आर्त Distressed persons (12) कितव Rogues (13) ग्रामयाजकाः Village-priests (14) महापाथिक Persons bound for a long travel (15) सामुद्रवणिक् Sea-Tradesman

(16) प्रव्राजित Ascetics (17) आतुरा: Sickly-people (18) लुब्धक misers (19) श्रोत्रिय Persons versed in sacred-lore (20) आचारहीन Persons who do not observe religious practices (21) क्लीब Impotent persons (22). कुशीलवा: Dramatic actors (23) नास्तिक Atheists (24) व्रात्य a man of the first three classes who has lost caste owing to the non-performance of the principal samskaras or purificatory rites (especially investiture of the sacred thread); an outcaste (25) दाराग्नित्यागिन: Persons who have abandoned their wives and the sacred fire (26) अयाज्ययाजका: Persons who officiate as priests for the degraded or outcastes (27) एकस्थालि Persons having common-mess (28) सहाय Comrade or a friend (29) अरिचर a person who moves with the enemies (30) ज्ञाति Agnates (31) सनाभय: uterine brothers or sisters (32) प्रागदृष्टदोषा: Persons found to be guilty and previously convicted persons (33) शैलूष Dancers, musicians, leaders of a band (34) विषजीवि Persons who eke out livelihood by dealing in poison (35) आहितुण्डिका: Snake-catchers (36) गरद Person who poisons (37) अग्निद An incendiary (38) कीनाश A niggardly-person (39) शूद्रापुत्र: an illegitimate-son (40) उपपातका: Persons committing minor sins (41) श्रान्त Persons tired or fatigued (42) साहसिक Desperadoes or rash persons (43) अशान्त troublesome persons (44) निर्धूत Persons deserted or treated with contempt (45) अन्तावसायिन: Chandalas etc. (46) भिन्नवृत्ति perons following evil courses (47) असमावृत्त: A bachelor who has not finished his course of holy-study (48) तैलिक An oil-grinder or manufacturer (49) भक्तिका: Devotees (50) भूताविष्ट Persons possessed (51) नृपद्विष: Disloyal persons (52) वर्षसूचक foretellers of rains (53) नक्षत्रसूचक Astrologers and Astronomers (54) अघशंसी Scandal-monger (55) हीनाङ्ग: Persons with defective organs (56) कुनखी Persons having bad fingers (57) श्वित्री White lepers (58) मित्रध्रुक् Ungrateful persons (59) शठ: Crafty persons (60) शौण्डिका: Arrack-vendors (61) ऐन्द्रजालिका: Magicians (62) उग्र: Harmful persons (63) श्रेणीगणविरोधिन: Unpopular persons (64) वधकृत् Slaughterer, a hangman, etc. (65) चित्रकृत् a painter (66) मङ्ख: Persons who go a-begging, carrying certain godesses. (67) कूटकारक Forgerer (68) कुहक: Conjuror (69) प्रत्यवसृत: A person who reverts from the third order (70) तस्कर A thief

(71) राजपुरुष Servants of the King, officials etc. (72) मनुष्यविक्रेता A person who sells men (73) विषविक्रेता poison vendor (74) अम्बुविक्रेता water vendor (75) लवणविक्रेता salt vendor (76) अपूपविक्रेता flour-cake vendor (77) वार्धुषिक: A usurer (78) कुलिक: A head or leader of a guild (79) स्तावक: A panegyrist (80) पित्रा विवदमान: One who quarrels with his father (81) अर्थ-सम्बन्धिन: Persons having wealthy-relations.

Exceptions to this rule are also laid down.

सर्वस्साक्षी संग्रहणे चौर्यपारुष्यसाहसे ।

—Yajnavalkya.

कार्यगौरवमासाद्य भवेयुस्तेऽपि साक्षिणः ।

—Narada, 188.

Anybody can be cited as a witness in cases of seduction of women, theft, assault, lottery, slander and libel, violence and rapine.

—Yajnavalkya.

Even the (unfit persons) can be witnesses according to the importance of the cause.

—Narada,

cf. Testis lupanaris sufficit ad factum in lupanari—A strumpet is a sufficient witness to a fact committed in a brothel.

Examination of witnesses:—The rules relating to the examination of witnesses are noteworthy.

साक्षिणः श्रावयेद्वादिप्रतिवादिसमीपगान् ।

Witnesses should be examined in the presence of both the parties.

स्वभावोक्तं वचस्तेषां ग्राह्यं यद्दोषवर्जितम् ।
उक्ते तु साक्षिणो राज्ञा न प्रष्टव्याः पुनः पुनः ॥

Evidence given by a witness naturally and without any effort should be accepted; and when once the witness so speaks out he should not be put to too much examination—.

अथवा कालनियमो न दृष्टः साक्षिणं प्रति ।
स्मृत्यपेक्षं हि साक्षित्वमाहुः शास्त्रविदो जनाः ॥

—Narada, 170.

There is no time-limit for the giving of evidence. As long as a witness remembers the facts of a case he can give evidence.

यस्य नोपहता पुंसः स्मृतिः श्रोत्रं च नित्यशः ।
सुदीर्घेणापि कालेन स साक्षी साक्ष्यमर्हति ॥

—Narada, 171

So long as a person's vitality is not gone, and his power of memory and hearing are sound, he is entitled to give evidence.

सुदीर्घेणापि कालेन लिखितः सिद्धिमाप्नुयात् ।
आत्मनैव लिखेज्जानन् चेदन्येन लेखयेत् ॥

—Narada, 167.

The attestors and scribe of a document can give evidence after any length of time. An exception is :

अथवा कालनियमो न दृष्टः साक्षिणं प्रति ।

—Narada, 170.

(1) स्मारितं or a reminded witness—

अष्टमाद्वत्सरात् सिद्धिः स्मारितस्येह साक्षिणः ।

A witness reminded can be expected to remember facts only for about 8 years from the date of occurrence and if he attempts to speak to facts which occurred more than 8 years ago his evidence cannot be given much weight—

(2) यदृच्छाभिज्ञः Self-offered or casual witness—
He can be expected to remember facts only for five years.

(3) गूढः Secret witness—Three years.

(4) उत्तरसाक्षी Defence witness—One year.

Regarding administration of oath to witnesses, Manu has stated:

सत्येन शापयेद्विप्रं क्षत्रियं वाहनायुधैः ।
गोबीजकाञ्चनैर्वैश्यं शूद्रं सर्वैस्तु पातकैः ॥

To a Brahmin, if you speak falsehood your truth will perish.

To a Kshatriya "if you speak falsehood your chariot, bows and arrows will perish.
To a Vysya " " your cattle, seeds, and gold will perish.
To a Sudra " " all the evils in the world will befall you.

An interesting exception to the rule is mentioned by Yajnavalkya.

वर्णिनां हि वधो यत्र तत्र साक्ष्यनृतं वदेत् ॥

If giving out the truth would result in the capital punishment of a person belonging to any of the four castes, a witness may give false evidence. Vignaneswara, comments upon this passage thus:—

If speaking out the truth results in the capital punishment of either of the parties to an action; and suppressing the truth would result likewise to a third party, a witness should keep silent. If

the witness finds that he will not be allowed to go unless he gives out the truth he should try as far as possible to give evasive and inconsistent replies. If that too is not possible he should give out the truth; for, by speaking falsehood he not only commits that sin but also the sin of bringing about the death of another person.

(3) भुक्तिः *Possession or Enjoyment*—

Narada has stated:

"भुक्तिर्वेषां गरीयसी"

—Possession or enjoyment is superior to all.

कालातिहरणाद्भुक्तिरिति शास्त्रेषु निश्चयः ।

—Narada, 75.

It is laid down in scriptures that possession or enjoyment for a long time becomes the best evidence. *cf Prescriptis est titulus ex usus et tempore substantiam capiens ob auctoritate legis*—prescription is title derived from use and time taking substance from the authority of the law.

विद्यमानेऽपि लिखिते जीवत्स्वपि हि साक्षिषु ।
विशेषतः स्थावराणां यन्न भुक्तं न तत्स्थिरम् ॥

—Narada, 77.

In spite of the oral and documentary evidence if there is no actual possession or enjoyment it is not safe to act; more particularly in cases of immovable property.

पश्यतोऽब्रुवतो भूमेर्हानिर्विंशतिवार्षिकी ॥

If a person who is not the owner of the land enjoys it for more than 20 years openly and without objection from the real owner the latter loses his rights in that land but illegal possession for however long a time it may be cannot give any legal rights, and the person in wrongful and secret possession is liable to be punished as a thief.

Gautama says:—

अनागमं तु यो भुङ्क्ते बहून्यब्दशतान्यपि ।
चौरदण्डेन तं पापं दण्डयेत् पृथिवीपतिः ॥

c. f. Quod ab initio non valet in tractu temporis non convalescit —That which is bad in its commencement, improves not by lapse of time.

उपेक्षां कुर्वतस्तस्य तूष्णींभूतस्य तिष्ठतः ।
कालेऽतिपन्ने पूर्वोक्ते व्यवहारो न विद्यते ॥

The real owner will be estopped if he stands by and keeps quiet without taking any action within the said period of 20 years.

आगमोऽभ्यधिको भोगात् विना पूर्वक्रमागतम् ।

Lawful acquisition is superior to possession except in cases where the latter is hereditary.

निर्भोगो यत्र दृश्येत न दृश्येतागमः क्वचित् ।
आगमः कारणं तत्र न भोगस्तत्र कारणम् ॥

When the person who alleges to be in possession cannot establish his possession or lawful acquisition of the property, it is the title that prevails and not the alleged possession.

युज्यतेऽनागमयस्तं न तद्भोगोऽतिवर्तते ।
प्रेते तु भोक्तरि धनं याति तद्वंशयोग्यताम् ॥

If a trespasser who has been in possession for a long time without any disturbance or objection from the real owner dies, that property goes to his heirs, and in an action against the heirs the burden of proving title lies on the real owner.

आहर्तैवाभियुक्तः स्यादर्थानामुद्धरेत् पदम् ।
भुक्तिरेव विशुद्धिस्स्यात् प्राप्ता या पितृतः क्रमात् ॥

—Narada, 90.

If the trespasser himself is sued during his life time, the burden of establishing possession for 20 years lies on him and if he fails to do so the real owner gets the property. In the case of the heirs of a trespasser his possession is good evidence in their favour only when it is proved that he was in undisturbed possession during his lifetime.

तथारूढविवादस्य प्रेतस्य व्यवहारिणः ।
पुत्रेण सोऽर्थः संशोध्यो न तद्भोगोऽतिवर्तते ॥

—Narada, 93.

If the trespasser dies pending the suit the burden of proving his possession for over 20 years lies on his heirs in the first instance.

आगमेन विना पूर्वं भुक्तं पूर्वैस्त्रिभिस्तु यत् ।
न तच्छक्यमपाकर्तुं क्रमात्त्रिपुरुषागतम ॥

Mere proof of possession for three generations even without lawful acquisition is good evidence against the real owner, and he can never recover that property. An exception is:

आधिः सीमा बालधनं निक्षेपोपनिधी स्त्रियः ।
राजस्वं श्रोत्रियद्रव्यं नोपभोगेन जीर्यति ॥

—Narada, 81.

—in cases of mortgages, boundaries, minor's money, deposit, bailments, women, 'king's money', money of a learned Brahmin, the property can be never lost to the real owner for want of enjoyment or possession. Narada further states:

अन्वाहितं हृतं न्यस्तं बलावष्टब्धयाचितम् ।
अप्रत्यक्षं च यद्भुक्तं षडेतान्यागमाद्विना ॥

—Narada, 92.

—Property bailed; property stolen; property deposited; property got by force; property taken with permission; property got by the servant without the knowledge of the master—in these six cases the persons who are in possession or enjoyment of the property cannot claim it to the detriment of the real owner merely by virtue of their possession.

Presumptions and Circumstantial evidence:—

असाक्षिप्रत्ययास्त्वन्ये षड्विवादाः प्रकीर्तिताः ।
लक्षणान्येव साक्षित्वे तेषामाहुर्मनीषिणः ॥

—Narada, 172.

—there are six classes of cases which don't require any proof. Circumstances or symptoms etc., alone are evidence in such cases. They are:

(1) 'उल्काहस्तोऽग्निदो ज्ञेयः' । A person with a fire brand in his hand, standing near a burning house may be presumed to be the incendiary.

(2) 'शस्त्रपाणिस्तु घातकः' । A person with a knife or sword in his hand, standing alone by the side of a stabbed person may be presumed to be the murderer.

(3) 'केशाकेशिगृहीतस्तु युगपत् पारदारिकः' । When two persons are found engaged in a sudden hair-to-hair fight in the presence of a lady the presumption is that it is a case of adultery.

(4) 'कुद्दालपाणिर्विज्ञेयः सेतुभेत्ता समीपगः' । A person with a hoe in his hand standing near a broken bund may be presumed to have caused the breach.

(5) 'तथा कुठारपाणिश्च वनच्छेत्ता प्रकीर्तितः' । A person with an axe in his hand standing by the side of a fallen tree may be presumed to have felled it.

(6) 'अभ्यग्रचिह्नो विज्ञेयो दण्डपारुष्यकृन्नरः' । A person found with cloths torn, face and ears reddened and such other fresh symptoms may be presumed to have assaulted somebody.

The above list is merely illustrative and not exhaustive

'आसाक्षिप्रत्यया ह्येते पारुष्ये तु परीक्षणम्' ।

—Narada, 175.

Of the above the first five do not require any rebuttal evidence but in the case of the last *i.e.*, alleged assault, battery and slander the presumption may be rebutted. As to how the presumptions may be rebutted, Narada states:

कश्चित्कृत्वात्मनश्चिह्नं द्वेषात्परमुपद्रवेत् ।
हेत्वर्थगतिसामर्थ्यैस्तत्र युक्तं परीक्षणम् ॥

for instance one may oneself inflict injuries on one's body, tear one's cloths etc., run up to the king and lodge a complaint against one of his enemies that he was beaten by him. In such cases the king or the Judge has to consider four things:—

हेतुः *i.e.* the demeanour of the complainant, his anxiety, the tone in which he complains, his general appearance, perspiration etc.

ii अर्थः— The nature of the injuries whether they are simple or grievous.

iii गतिः—Possibilities and probabilities; when there is a swelling or intumescence on the back of the person, whether it is possible or probable that the injury can be self-inflicted.

iv सामर्थ्यम्—Capacity or the strength of the persons, whether the complainant is stronger or weaker than the accused.

Missing persons:—If a person is not heard of for 12 years the presumption is that he is dead and his obsequies are to be performed by his kinsmen. But in the case of missing parents their sons have to wait for 15 years and then perform the Sradha. Thus in

वैद्यनाथीयं page. 125 it is stated:— यस्य प्रोषितस्य वृत्तान्तः नैव श्रूयते तस्य द्वादशात् वर्षादूर्ध्वं विधिवदौर्ध्वदैहिकं कुर्यात् । "पितरि प्रोषिते यस्य न वार्ता नैव चागतिः । ऊर्ध्वं पञ्चदशाद्वर्षात् कृत्वा तत् प्रतिरूपकम् ॥"

Burden of proof in general:—With reference to burden of proof Narada has stated:

सर्वेष्वर्थविवादेषु बलवत्युत्तरा क्रिया ।

—generally in all cases of money-disputes the burden of proof lies on the defendant.

आधौ प्रतिग्रहे क्रीते पूर्वा तु बलवत्तरा ।

—in cases of mortgages, gift or sale, burden of proof lies on the plaintiff. Bhavaswamy gives this example. *A* mortgaged his

land first to *B* and then to *C*. In an action by *B*, he has to prove that the lands were first mortgaged to him.

प्राङ्न्यायकारणोक्तौ तु प्रत्यर्थी निर्दिशेत् क्रियाम् ।
मिथ्योक्तौ पूर्ववादी तु प्रतिपत्तौ न सा भवेत् ॥

When the defence is *res judicata* or discharge, burden of proof lies on the defendant. When the defence is one of denial plaintiff has to prove the case. If defendant admits the claim plaintiff need not prove anything.

Judgments जयपत्र :—A judgment is admissible in evidence to show that the matter was once decided प्राङ्न्याय. But there are cases where the defeated party in the prior action can show that the previous decision is not valid and the case should be decided again. Following are some of the typical examples.

स्त्रीषु रात्रौ बहिर्ग्रामादन्तर्वेश्मन्यरातिषु ।
व्यवहारः कृतोऽप्येषु पुनः कर्तव्यतामियात् ॥

—Narada, 43.

When the transaction takes place with ladies, during nights, outside the village, in the innerparts of the house and in the midst of enemies, even though the matter is once decided it is to be tried again.

Miscellaneous:—

प्रमादाद्धनिनो यत्र न स्याल्लेख्यं न साक्षिणः ।
अर्थं चापह्नुते वादी तत्रोक्तस्त्रिविधो विधिः ॥

—Narada, 235.

If unfortunately a creditor has not got any documents to evidence his debt nor any witnesses and the debtor denies the debt three courses are open to the creditor:

चोदना प्रतिकालं च (२) युक्तिलेशस्तथैव च ।
तृतीयः (३) शपथः प्रोक्तस्तैरेनं शोधयेत् क्रमात् ॥ (१)

—Narada, 236.

—(1) demanding often (in the presence of mediators); (2) by tact, making the debtor admit the liability; (3) putting the debtor to oath. Narada declares:

अभीक्ष्णं चोद्यमानोऽपि प्रतिहन्यान्न तद्वचः ।
त्रिचतुष्पञ्चकृत्वो वा परतोऽर्थं स दापयेत् ॥

—Narada, 237

When the creditor makes a demand three, four or five times and the debtor keeps silent without denying the debt the presumption is that he really borrowed the amount—

चोदनाप्रतिघाते तु युक्तिलेशैस्तमन्वियात् ।
देशकालार्थसंबन्धपरिमाणक्रियादिभिः ॥

—Narada, 233.

When the frequent demanding proves useless, the creditor should try the second method *viz.* युक्ति, tact, and proof by probabilities, by specifying the place, time, the amount borrowed, and the relationship between the parties.

When the two methods fail the debtor may be challenged to take oath, that he had not borrowed.

SUMMARY OF ENGLISH CASES.

CANADA RICE MILLS, LTD. *v.* UNION MARINE AND GENERAL INSURANCE CO., LTD. (1940) 4 All.E.R. 169 (H.L.).

Insurance—Marine insurance—Perils of the sea—Ventilators closed in rough weather—Goods damaged through lack of ventilation—Damage whether due to "perils of the sea."

Where under a policy of marine insurance a cargo of rice was insured against the perils of the sea and during rough weather in the voyage the ventilators were closed and the goods were damaged through lack of ventilation,

Held, that the damage having been caused by action necessitated to prevent the peril of the sea (*viz.*, to prevent incursion of sea-water through the ventilator) it was a loss due to the perils of the sea and can be recovered under the Policy.

MERCHANTS INSURANCE CO. *v.* HUNT, (1940) 4 All.E.R. 205 (K.B.D.).

Insurance—Motor insurance—Non-disclosure of facts in proposal—Unqualified negative answer—Not to be construed as to the best of proposer's knowledge.

In a motor insurance proposal form in answer to the question, "Have you or any person who to your knowledge will drive the car ever been convicted of an offence in connection with a motor vehicle or motor cycle or is any prosecution pending?", the answer given was "No".

Held, that the answer was an assertion first of all that he has the knowledge which he purports to impart and secondly that that knowledge is what he is imparting. The answer to

the question was a material matter and will affect the question of liability under the policy. But the insurance company expressly contracted in the policy that "nothing in the policy will affect the right of any person indemnified by the policy or of any other person to recover an amount under or by virtue of the provisions....." The company therefore cannot avoid the policy when strangers are claiming under it.

POLLOCK *v.* BUNT, LTD., (1940) 4 All.E.R. 264 (C.A.).

Master and servant — Doctrine of common employment — Limitations.

It is not sufficient to debar a plaintiff from recovering against the employers, in respect of an injury attributable to another man also in their employment, by whose negligence the plaintiff has suffered, merely to assert that they were both servants of the defendant company or firm in the sense that they were both paid their wages by that firm or company. The rule does not apply where the injured man and the negligent co-employee are not engaged in the same common work, or are not fellow labourers in the same work, or are not engaged in different departments of duty. Where the plaintiff whose duty was to attend to mail orders was injured while driven in a car belonging to the employer for carrying servants of the company from one point to another in the course of his duties the doctrine of common employment is not applicable to debar the claim for damages.

FORRESTER *v.* LLANELLY STEEL CO., (1941) 1 All. E. R. 1 (H.L.).

Workmen's Compensation — Various Industries Scheme (Silicosis, 1931)—Breaking of furnace lining of bricks containing silica for repairing—If included in "Crushing silica bricks" in the process of manufacture.

A Various Industries (Silicosis) Scheme (1931) made in accordance with the Workmen's Compensation Act provided *inter alia* for compensation for workmen employed in "the process specified and those processes only" in the trades thereunder mentioned and in the case of workers engaged in the manufacture of steel or in steel foundries the specified processes were thus described:—"crushing or grinding of silica rock, or any handling incidental to such crushing or grinding, or crushing or grinding of bricks or other articles containing no less than 80 per cent. total silica". A workman was engaged in such works and he built and repaired smelting furnaces and ladles, and, while engaged on the former was smelting bricks containing

more than 80 per cent. of silica. He had to break down old layers of bricks in the inside of the furnace and build up new layers. The process required use of crowbars to break them down and new bricks often had to be chipped to shape. These involved the creation of large quantities of silica dust which the workman had to inhale and in consequence contracted silicosis. In a claim for compensation,

Held, that the work amounted to "crushing bricks containing more than 80 per cent. of silica" under the scheme and the workman was entitled to compensation. "Crushing" does not necessarily mean crushing to powder.

(1940) 1 All.E.R. 235, reversed.

BENHAM *v.* GAMBLING, (1941) 1 All.E.R. 7 (H.L.).

Tort—Negligence causing death—Damages for "loss of expectation of life"—Assessment—Considerations.

In an appeal against the award of £1,200 as damages for loss of expectation of life of a boy aged 2½ years in a motor accident,

Held, that the damages in fact were incapable of being measured in coin of the realm with any approach to real accuracy. The assessment of damages is not to be made by applying the statistical or actuarial test. Such damages should not be calculated solely or even mainly, on the basis of the length of life which is lost. Before damages are awarded in respect of the shortened life of a given individual under this head it is necessary for the Court to be satisfied that the circumstances of the individual life were calculated to lead on to the balance, to a positive measure of happiness. The question is not whether the deceased had the capacity or ability to appreciate that his further life on earth would bring him happiness. The test is not subjective and the right sum to award depends on an objective estimate of what kind of future on earth the victim might have enjoyed, whether he had justly estimated that future or not. No regard must be had to financial losses or gains during the period of which the victim has been deprived. The damages are in respect of loss of life not of loss of future pecuniary prospects. The uncertainty about the child's future must also be considered. In assessment of damages under this head a very moderate figure should be chosen.

(1940) 1 All.E.R. 275, reversed.

SCAMMELL *v.* OUSTON, (1941) 1 All.E.R. 14 (H.L.).

Contract—Formation—Order for goods on the understanding that the balance of purchase price can be had on hire-purchase terms—How far a completed contract.

The plaintiffs wished to acquire a new motor van, giving in part exchange an old van. On 23—11—1937 an interview took place between the partner of the plaintiff firm and a representative of the defendants. On the following day the defendants wrote to the plaintiffs a letter giving a quotation for the van proposed to be acquired by plaintiffs and the allowance to be made for the old van. On 6—12—1937 in an interview the offer contained in the letter of 24—11—1937 was accepted by the plaintiffs. On 7—12—1937 defendants wrote to plaintiffs thanking them for the order and asking them to send the official order to complete their records. This request was complied with by letter dated 8—12—1937 in the following terms: "We beg to acknowledge receipt of your acceptance of our order for vehicles as per specifications sent on November 25. This order is given on the understanding that the balance of purchase price can be had on hire-purchase terms over a period of 2 years." Throughout the negotiations the plaintiff wanted to purchase on hire-purchase terms and there was never any question of an out and out purchase by the plaintiffs. The defendants repudiated the transaction and in an action for damages for breach of contract,

Held, reversing the decision of the C.A. in (1940) 1 All.E.R. 59, that the crucial sentence, "This order is given on the understanding that the balance price can be had on hire-purchase terms" was so vaguely expressed that it cannot standing by itself be given a definite meaning. As there was no *consensus ad idem* there was no contract and therefore no breach.

LUXOR (EASTBOURNE), LTD. (IN LIQUIDATION) AND OTHERS v. COOPER, (1941) 1 All.E.R. 33 (H.L.).

Principal and Agent—Promise to pay commission on completion of sale of principal's property—Willing buyer found—Principal refusing to complete sale—Agent's right to commission.

The appellants were private companies and were the freeholders of the Luxor Cinema at Eastbourne and the Regal Cinema at Hastings respectively. The board of directors of each of the appellant companies was composed of the same individuals and one *W.B.* who was the managing director of both companies, held the majority of the issued shares. On the death of *W.B.* on 11—9—1935 his son *H.B.* became a director in his place. Prior to his death *W.B.* in the summer of 1935 had asked the companies' auditor *E.* to get an offer for the purchase of the two cinemas and *E.* said that he would approach his "client" meaning thereby the respondent. *W.B.* was alleged to have said that *E.* would have a commission. After *W.B.'s* death another director *G.* told *E.* after a directors' meeting that the directors had decided to sell the cinemas and that *E.'s* client should make the offer through the companies' solicitor who had authority to deal with the matter. *E.* told the respondent of

this and the respondent shortly afterwards introduced to *E.* a prospective purchaser willing to negotiate for the properties. *E.* took the respondent to meet the companies' solicitor. Ultimately on 11—10—1935 after negotiations the solicitor's firm replied to *E.* confirming that on completion of the sale of the cinemas to the purchaser a procuration fee of £ 10,000 was to be paid to the respondent. At the directors' meeting held on 2—10—1935 to consider the offer, *H.B.* opposed the motion for accepting the offer. The sale was not proceeded with and the disposal of the cinemas ultimately took place by way of a sale of shares in the appellant companies to another party. In an action by the respondent for damages for not carrying through the sale, thereby preventing the respondent earning his commission,

Held, upon a true construction of the contract the agent also took the risk of the owner not being willing to conclude the bargain with the agent's nominee and the respondent's claim must fail. An implied term that the principal will not refuse to go on with the sale cannot be inferred and as no binding contract was made between vendor and purchaser, the agent was not entitled to the commission. Decision of Court of Appeal, (1939) 4 All.E.R. 611, reversed.

GRIFFITHS AND ANOTHER *v.* SMITH AND OTHERS, (1941) 1 All. E.R. 66 (H.L.).

Tort—Invitation by management of a non-provided school—Injury to invitee by collapse of floor due to want of repairs—Liability—Public Authorities Protection Act—Limitation under.

A building belonging to a non-provided school was nearly 100 years old. The headmaster with the authority of the managers invited among others the plaintiff whose son was a pupil at the school to attend an exhibition on the premises. Owing to want of repair the flooring collapsed and the plaintiff having been injured sued the manager for damages. It was found as a fact that those who were charged with the duty of keeping the premises in repair had not taken reasonable care to discharge that duty. It was the duty of the manager to keep the premises in good repair out of voluntary subscriptions or donations and in some cases, trust funds or endowments. The action was commenced 22 months after the accident and the managers claimed that it was barred under Public Authorities Protection Act, S. 1.

Held, that the managers authorised the exhibitions in the course of carrying on the public elementary school and can avail themselves of the protection of the Public Authorities Protection Act and the action not having been commenced within 12 months was barred. Decision of the Court of Appeal, (1939) 2 All. E.R. 76, affirmed.

SUGAR *v.* LONDON, MIDLAND AND SCOTTISH RAILWAY CO., (1941) 1 All.E.R. 172 (K.B.D.).

Contract—Railway ticket—Conditions printed on back—Notice drawing attention to it blotted out by date stamp—Effect.

Conditions were printed on the back of a railway ticket referring passengers to conditions contained in the railway time tables and bills protecting the railway company against claims for damages for negligence. On the ticket issued to the plaintiff the words "For conditions see back" were blotted out by the date stamp which was put on the face of the ticket. In a claim for damages for injuries sustained by the plaintiff by falling into a hole while she was leaving the station, by reason of the defendant's alleged negligence in leaving the hole in a passage,

Held, that the railway company did not do that which was reasonably sufficient to give the plaintiff notice of the conditions and therefore the plaintiff was entitled to recover damages.

CAMPBELL *v.* CAMPBELL, (1941) 1 All.E.R. 274 (C.A.).

Costs—Solicitor's lien on costs ordered to be paid to his client—If "property recovered or preserved" within the meaning of Solicitors Act (1932), *S.* 69—*Solicitor's common law right.*

By decree *nisi* in a divorce petition the husband the petitioner was ordered to pay his wife's taxed costs. The intervener in the wife's cross-petition had previously been dismissed from the suit with costs against the wife. The wife's costs were taxed at the sum of £ 826-15-10 to meet which there was a sum of £ 550 in Court. The sum was paid out to the appellant who was the wife's solicitor leaving a balance of £ 276-15-10 unprovided for. On July 31, 1940, an order was made for payment of this balance to the appellant by the respondent. The costs of the intervener were taxed at £ 302-1-11 and by a document dated July 3, 1940, the intervener assigned this sum to the respondent in consideration of his paying her a like sum in cash. The appellant took out a summons on August 23, 1940, for an order that he should have a charge to the extent of £ 276-15-10 upon the costs ordered to be paid by the respondent to his wife.

Held, that without deciding whether costs were not "property recovered or preserved" within the meaning of Solicitors Act (1932), S. 69 the solicitor's claim could be made at common law for a charging order on a sum ordered to be paid as costs.

JOTTINGS AND CUTTINGS.

UNVEILING OF MR. GANTI LAKSHMANNA'S PORTRAIT.

A portrait of the late Mr. Ganti Lakshmanna was unveiled at the premises of the Madras Advocates' Association, on Thurs-

day, the 1st May, 1941, by the Hon'ble Mr. Justice Venkataramana Rao.

In requesting His Lordship to unveil the portrait, the learned Advocate-General (Sir Alladi Krishnaswami Aiyar) observed:

"I knew the late Mr. Lakshmanna from the days the latter was practising at Rajahmundry and I was always impressed with the careful preparation he made of every case entrusted to him, his powers of cross-examination and his adroitness in handling a judge. He always commanded the respect of judges. He had a love for ornate expressions and sometimes also for quaint phraseology and believed in the dignity and grandeur of the spoken word. There was hardly any person at the Bar, especially from Andhradesa, who had not received some kindness at his hands. Hospitality was the essence of his life. He greatly encouraged pundits and scholars and he was generous to a fault. By his death the profession is distinctly a loser. I am glad to note that the Advocates' Association is honouring the memory of an esteemed member of the profession and I hope that the members of the Association will be inspired by the example set by the late Mr. Ganti Lakshmanna."

In unveiling the portrait, the Hon'ble Mr. Justice Venkataramana Rao said:

"When the Honorary Secretaries of the Advocates' Association invited me to preside over this function I responded with pleasure as it gave me an opportunity not only to join in the public testimony of the Bar and the Bench to the utility and usefulness of a life which embodied the best traditions of the legal profession but also to pay my personal tribute to the memory of a comrade at the Bar, whose friendship I cherished. While at the Bar, I had many opportunities of coming into contact with him and I soon learned to value the talents and virtues which he brought into the profession. This function is a testimony of your regard and love for him. His portrait will keep his memory alive and be an inspiration to the future generation of lawyers, and particularly, the lawyers from Andhradesa.

Born in 1877 in Perur, Amalapur taluk, East Godavari District, after a distinguished academic career, Mr. Lakshmanna joined the Rajahmundry Bar in about 1901. He soon acquired the reputation of being a sound and able lawyer and rose to be one of the accredited leaders of that Bar and acted as the Public Prosecutor for several years. Finding the district of East Godavari too limited for his talents, he desired to have a wider sphere for his activities and joined the Madras Bar in 1920.

The story of the advent of the Andhras to the Madras Bar was an adventure of faith. Quite early a few venturesome advocates like my friend Sir Vepa Ramesam tried to carve out their careers at Madras. But it was not until Mr. Peri Nara-

yanamurti and Mr. Prakasam, who with their boldness and daring pushed themselves up, that their settlement for good began. Mr. Ganti Venkataramayya, Mr. B.N. Sarma and others left the provincial Bar for the metropolis. It was their place that Mr. Lakshmanna came to take. Like them, he came to Madras with an established provincial reputation and assured of a clientele. His industry and capabilities secured him not only an extensive practice but also marked him for leadership among his Andhra fellowmen. When he left us he was occupying a place among the foremost at the Bar.

Two qualities of Mr. Lakshmanna as an advocate have impressed me. He was, what I may call, a persistent advocate. What he considered to be the crucial point of his argument he pressed home from different lines of approach till he assured himself that it had gone home. He had a remarkable equanimity of temper. Painstaking assiduity was there and warmth of debate as well. But I never saw him lose his temper. The smile never departed from his lips nor serenity from his argument. He presented his case with clearness and argued it with considerable zeal and energy. He was a strong opponent and I felt the strength of it in a heavy case where I was opposed to him. It went on in the Sub-Court of Bezwada off and on for more than a year. It was a complicated case full of facts and figures. I admired the labour, energy and the meticulous accuracy with which he mastered them. Mr. Lakshmanna possessed a sound knowledge of law. He never committed the sin of arguing a case without reading his papers. His preparation was thorough. He was a very conscientious advocate. Mr. Lakshmanna rose from the ranks and was a stranger to 'aloofness'. His juniors liked him and he treated them like his brothers. His clients clung to him. He was a poor man's friend and full of human kindness and it was well known that he was generous to a fault. Though bashful and reserved by nature, persons who came into contact with him knew that he put his friends at ease and conversed freely with them. He was a true gentleman. He had the talent of not offending. He was often humorous and indulged in witty talk and enjoyed a laugh. He deservedly earned a high respect, both from the Bar and the Bench.

It is but just and fitting, that this Association, of which he was a most useful and respected member for many years, should honour his memory by having his portrait on the walls of the Association. May his memory be cherished for long.

BAR'S FAREWELL TO MR. JUSTICE PANDRANG ROW.

There was a large gathering of Advocates present at the Seventh Court Hall, on Friday, the 2nd May, 1941, to bid fare-

well to the Hon'ble Mr. Justice Pandrang Row, who is retiring from service in June. On behalf of the Bar, the Advocate-General (Sir Alladi Krishnaswami Aiyar) said:

"The Bar has assembled here to bid your Lordship farewell on the eve of your retirement. In the years you have been here with us Your Lordship has won the esteem of the Bar for your intellectual brilliance, your instinctive sense of justice and your quick grasp of and insight into the complicated facts and legal points involved in the causes which were heard by you. It took some time for the Bar to get accustomed to your Socratic method, your habit of testing every contention urged by the Bar by a counter-contention or suggestion from the Bench and taking counsel by surprise by questioning the very premises which counsel might have unguardedly taken for granted; but soon the Bar got accustomed to your manner and began to appreciate and admire those very qualities. The most adroit counsel could not get away from a point put forward by Your Lordship and could not cloud the relevant issues by clever evasion or foggy verbiage.

A punctilious insistence on the use of the correct expression was a striking feature of Your Lordship on the Bench, and not infrequently did the Oxford dictionary, when indented upon, support you as against some who might swear by the great lexicon which sometimes let them down. Your insistence on precision of expression no less than of thought might occasionally have led Your Lordship to what seemed to be bantering sallies which, if enjoyable to strangers to the contest, might prove disconcerting to counsel engaged in the fray. But we that practised before you came to realise that your only object in questioning was to rivet the attention of counsel to the crucial and essential points in the case.

In your career you have demonstrated that subtlety and the power of close ratiocination are not the special characteristics of an advocate or a judge recruited from the Bar, and that a judge who has not had the advantage of a practice at the Bar might as keenly appreciate the intricacies and subtleties of the law as one who had it. I have often felt that a judge, weighed down by a knowledge of too much case law and conflicting decisions might even suffer from it and it may be refreshing and stimulating to grapple with a point on first principles, though the course is by no means clear either to the judge or the advocate at the present day.

More than every other judicial quality what made a profound impression on the Bar was your passion for justice and a feeling, if I may say so, for the under-dog which enabled you to get rid of oppressive technicalities, if occasionally you were not loth to use those technicalities for the purpose of serving the

paramount interests of justice. To get to the heart of a case and to arrive at a sound conclusion in regard to questions of fact involving complicated details and examination of human motives is a much more difficult task for a judge, I should think, than even to decide a recondite point of law with the assistance of counsel engaged on both sides, and we have always found your judgments on questions of fact eminently satisfactory. In no field was this passion for substantial justice more pronounced than in the protection of the liberty of the subject and benignant interpretation of legislation designed to promote social welfare. Your Lordship never exhibited any bias against new methods of approaching social problems or ameliorative legislation in this regard. The most difficult task of a judge of the present day is that, while in interpreting the law and administering it he cannot depart or deviate from recognised judicial canons he has necessarily to be in touch with the currents of social life which demand a freshness of outlook and a broad humanity.

We will be missing Your Lordship very much in these halls for a long time. Let me once again on behalf of the Bar bid you farewell and pray that you may long enjoy rest, health and happiness."

Mr. Justice Pandrang Row in his reply observed:

"I wish at the outset to thank you Mr. Advocate-General for the kind words which you have used in bidding me farewell. I hope that the farewell is only of a judicial nature, for I will continue to meet you all in other places where there is more freedom of intercourse than between the Bench and the Bar. The Advocate-General as representing the Madras Bar has shown how successfully a lawyer can make bad things look good. He has painted my characteristics in such a way that I could hardly recognise myself. Any way what all the Advocate-General had stated, I take it, were well meant. While not taking credit for the good things you have said, I shall remember the kind feelings which prompted you to utter all these sentiments. I must say that while I tried my best to do justice according to law, I have been guilty of a certain harshness of manner and perhaps I have allowed my tongue to get the better of my judgment and said things which ought not to have been said from my place on the Bench or said things in a way which might have been improved. In making this confession I have only this excuse, that it was all done with the best of intentions and there was nothing in the heart. As days passed, I recognised that it was a mistake on my part to have allowed my nature to prevail to such an extent and I hope the members of the Bar will forget those things. On such an occasion like this I do not propose to deal with any generalities. It is a purely personal function and therefore it is not the proper platform nor the proper time to deal with subjects

which are of interest to you. I have found in my life that I can say something in the course of a conversation rather than in a public speech. I thank you gentlemen for the kindness which prompted this function and which has brought you here in such large numbers. I feel it not so much as a compliment to me but more as an indication of your own never failing kindness.

The assistance which the Bar has given to the judges is something, of which no adequate account could be given without some incriminating confessions. I do not propose to incriminate myself. I do not want to say how much I have been helped by the Bar. You may take it as a general statement that without you, it would have been almost impossible, in a majority of cases, for me to do my work with satisfaction. If I have the satisfaction that I have done my duty well, it has been due to the ungrudging assistance given by you, in spite of my faults of manners and all other sorts of faults. You have been giving me assistance in the spirit of comradeship and it is very good of you to have thought of having this occasion to make a public announcement of your kindly feelings towards me. On a formal occasion like this, I do not feel at home but, I may tell you, that informally I feel I can hold my own. I thank you once again and I hope you will remember me as one who has done his work, not wisely nor prudently, but as one who did his work to the best of his ability".

Jettison of a Judicial Wig.—Like other mundane things, even judicial wigs have on occasion suffered mishap. One of the most noted of these occurred in the judicial career of Lord Ellenborough. On that occasion the Chief Justice was being accompanied by Lady Ellenborough in the tour of the circuit. Like quite ordinary persons, the Chief Justice had a profound and not unreasonable antipathy to his carriage being encumbered—so he put it—with unnecessary band and other boxes containing the numerous hats and other paraphernalia of a lady's wardrobe. On this occasion his Lordship's foot, after a while *en route*, came in contact with one of the obnoxious receptacles, whereupon, uttering some ejaculations of an objurgatory character, he jettisoned the box, at the same time commanding the coachman to drive on. On reaching the circuit town the chief proceeded to array himself for the Bench and demanded his wig, a request which was meekly answered by the attendant with the statement that "It was thrown out of the carriage window!" What is the moral? Surely this, that even Chief Justices sometimes act hastily, quite like ordinary mortals, and have to repent at leisure.
—*The L.T.*, 1940, *p.* 332.

Judicial Authors.—The appearance of a new book from the pen of Lord Justice MacKinnon, bearing the title "On Circuit," is fresh evidence, if that were needed, of the learned Lord Justice's keen interest in subjects outside those concerned with the construction of charter-parties and bills of lading into the mysteries of which he was early indoctrinated while in the chambers of the late Lord Justice Scrutton. A few of his predecessors on the Bench have, like him, also found relaxation and pleasure in contributing to *belles lettres,* for example, Lord Bowen and Lord Darling, each possessing a kindly wit and the gift of felicitous expression. The majority of our judges have been content to add to the wealth of precedent which we study not so much for pleasure but for professional edification. Some people, no doubt, possess a catholic taste in letters, as had a former Archbishop of Canterbury, who at a social gathering remarked that he had never read a book from which he had not derived some profit. Among his hearers on that occasion was Mr. (later Vice-Chancellor) Wickers, who quietly asked, "Did your Grace ever try the second volume of 'Vesey and Beams'," a work not unfamiliar to equity practitioners but not regarded as containing the sprightly product of Lord Eldon's intellect. One gathers that this volume had not come within the Archbishop's course of reading.—*The S.J.*, 1940, *p.* 709.

The Week's Personality.—When Sir James Scarlet became Lord Abinger, Chief Baron of the Exchequer in 1834, he left behind him a greater reputation as an advocate than he was to acquire in his ten years as a judge. At the Bar his success had been extraordinary and his influence with judges almost magical. The wits said that he had invented a secret machine to make the members of the court nod their heads to his propositions and once an angry opponent suggested that the King's Bench Judges virtually allowed him to preside there. Yet, he did not usually rely on the rhetoric of advocacy, nor was he a deep-read lawyer. An easy gentlemanly, colloquial appeal to the understanding of his hearers, helped by a musical voice and a handsome appearance, somehow made his arguments seem obviously right. His way with juries was not to address them collectively, but to select one with whom he reasoned as best he could, placing himself as it were in mental communication with him and going on till he felt he had convinced him. When he appeared for the defendant in an action over a nuisance alleged to be dangerous to health, his cross-examination of the plaintiff's chief witness, a lady who lived near by consisted almost entirely of solicitous enquiries as to her domestic relations. She became most confidential and out of her own mouth he showed that in the immediate vicinity of the alleged nuisance she had reared a large, healthy family.—*The S.J.*, 1940, *p.* 716.

Hog and Bacon.—Among other stories recalled by Balfour Browne is that which tells of the play on the words "Hog" and "Bacon". It seems that Sir Nicholas Bacon, the father of the more famous Francis, was reputed a very great judge in his day. Once, when going the northern circuit, he had to sentence a prisoner named Hog, who, when called upon to state why he should not be punished for the offence with which he was charged, pleaded, somewhat irrelevantly, that he was akin to the judge. "How is that?" asked Sir Nicholas. "If it please you, my Lord," was the answer, "thy name is Bacon and mine is Hog, and in all ages Hog and Bacon have been so near kindred that they were not to be separated." According to the legend Bacon *pere's* reply was this: "Aye, but you and I cannot be kindred except you be hanged, for Hog is not Bacon until it is well hanged." If this story is not strictly authentic it is certainly *ben trovato,* and it had, also according to legend, a modern *replica,* for it is said that on one occasion Mr. Justice Hawkins, being asked what he would have for lunch, looked down the table and then said, "I will try some of that hung beef". "It is not hung beef," said some one but added, "it will be sure to be hung if the judge tries it," an apt observation in view of that judge's alleged "hanging and quartering" propensity.—*The L.T.*, 1941, *p.* 10.

Hot and Cold.—Last term while the Court of Appeal was sitting in a basement shelter one day the Master of the Rolls suggested that Serjeant Sullivan who was engaged in the case might find the open door-way near him too cold. "The superficial area of some counsel," replied the Serjeant "does not present much bodily surface to the draught." Those who have been discriminating enough to read his reminiscences will recall a delightful sketch of "Bones" Sullivan standing beside "Belly" McSwiney, drawn when they were both King's Serjeants in Ireland, and will understand what he meant. Whether or not there is a scientific law of protective leanness, the attitude of Bench and Bar towards draughts has long run to extremes from Mr. Baron Parke, who on the coldest day of early spring would insist on every window in court being open, to a much later judge, who would have them all shut and get a policeman to sit on the ventilator. Among the adherents of the former school can be numbered Judge Konstam, the "fresh air judge," who once in ordering the opening of the windows complained that "asphyxia seems to be a favourite form of death in many of our courts." Between the two forms of suffering Mr. Justice Goddard found himself in a difficult position at Durham a couple of years ago, for while he complained that "judges, jury and counsel can hardly keep awake sometimes because of the stifling atmosphere,"

he found that "the only way of ventilating this court is by opening a series of doors on the left of the judge causing a cold draught on one side of his face."—*The S.J.*, 1941, *p.* 7.

Fire in Bristol.—The flames which destroyed the old Crown Court at Bristol during an air-raid very fairly spared the new Civil Court, for that was put up five years ago to replace a building likewise burnt down, a structure of which MacKinnon, L.J., in his new book of circuit reminiscences, writes: "I do not remember that there is any reason to regret it." I wonder whether the great Sword of Justice, which hung on the walls of the Crown Court, perished. Ordeal by fire is nothing new for Bristol. The great riots of 1831 were among the fiercest popular outbursts these islands have seen, the old Mansion House, the Bridewell and the Bishop's Palace being burnt by the mob. In the result a Special Commission sat to try a hundred and two prisoners, but though eighty-one were convicted only five were hanged.—*The S.J.*, 1941, *p.* 7.

Hypothesis.—Among the many Saturday evening diversions provided by the British Broadcasting Corporation there recently appeared a parlour game called " Hypothesis ", said to be " for the highly intellectual and the very serious folk, not forgetting those with a sense of humour". Those taking part were a lawyer, a scientist, a historian and an economist. The game consisted in putting a hypothetical question to each member of the group, and after some slight discussion the appropriate member of the group provided the answer. We trust that we are not unduly sensitive in detecting a good humoured " baiting " tendency in the question addressed to the lawyer, which was " What would be the state of society in this country if there were no legal profession?" In the course of the discussion the debaters arrived at the conclusion, somewhat startling to professional ears, that the golden age would have arrived simultaneously with the disappearance of the legal profession. It was a relief to hear that it was not a case of *post hoc propter hoc,* but only because mankind being perfect in a golden age there would be no need for either law or lawyers. Quite apart from golden ages, as the lawyer pointed out, there must be law in every civilised society, and a certain fifteenth century King who had tried to dispense with lawyers in his Parliament (called the "Unlearned Parliament") soon found out the difficulty of doing so, and the Parliament came to a quick end. He truly stated that the Workmen's Compensation Act was originally devised so as to be understood by everyone and therefore presumably to dispense with the need for any resort to lawyers, but in fact it had put more money into

the pocket of lawyers than any other piece of legislation. It might be added in respectful amplification of this important and little-understood point that the fault of disputing the meaning of ambiguous language lies at least as much with the litigant as with the lawyer. From the lawyer's point of view the best drafted Act of Parliament is one which contains the fewest possible of those ambiguities and vaguenesses which are to be found in abundance in the written and spoken language of the English and other literary people. That explains, to some extent, why parliamentary draftsmen have evolved a language which, though frequently baffling to the layman, and sometimes in its more involved passages to lawyers and judges as well, at any rate seeks to express definite and accurately ascertainable ideas through the medium of agreed words and phrases.—*The S.J.*, 1941, *p.* 50.

"*The Fifth Freedom*".—Every lawyer will appreciate the full value of what the Lord Chancellor termed "the fifth freedom" at the opening of a War Weapons Week at Kingston-upon-Thames on 24th January. He quoted President Roosevelt's recent reference to the four freedoms which every true democracy must seek to secure—freedom of speech, freedom from want, freedom from insecurity, and freedom from fear. The fifth freedom, said Lord Simon, was the freedom of every citizen to appeal to the Courts to protect him from injury and insult even though the wrong was committed by the misuse of official power. His lordship instanced the impossibility of applying for a writ of *habeas corpus* from a German concentration camp or suing the Gestapo for damages. Even in cases of detention under the necessarily stringent Reg. 18-B of the Defence (General) Regulations, 1939, applications to the High Court for writs of *habeas corpus* have been heard by the High Court. In *In re Sabini* on 20th January the Lord Chief Justice remarked on the importance in cases in which the liberty of the subject was involved of observing with scrupulous accuracy the provisions invoked. The mere existence of such remedies as the writ of *habeas corpus* and actions for damages for assault and false imprisonment is sufficient to deter any offender, official or otherwise, against, "the chartered right of Englishmen". This freedom, won as Blake said, "in many a glorious field," will be won on glorious fields again, and only then civilised society will be able to resume its progress towards the freedom from want, insecurity and fear which President Roosevelt put as the goal of every democracy.—*The S.J.*, 1941, *p.* 50.

[END OF VOLUME 1941—I.]